

May 13, 2015

Honorable Kathleen H. Burgess  
Secretary of the Commission  
New York State Public Service Commission  
Empire State Plaza  
Agency Building 3  
Albany, NY 12223-1350

Dear Ms. Burgess,

Please find the attached communication to APEX from the US Fish and Wildlife Service (USFWS) in reference to:

- A March 117, 2015 meeting between APEX and USFWS regarding APEX's proposed Lighthouse Wind Industrial Wind Turbine Emplacement Project under consideration for Somerset and Yates, NY.
- Comments on APEX's proposed "*Avian and Bat Study Plan for the Proposed Lighthouse Wind Project (Plan)*"
- Overall comments on the dangers of proposed Lighthouse Wind Project siting in the Somerset, NY/Yate, NY area.

Summary of the letter follows:

**Excerpt of Letter**

***May 6, 2015***

***From: Gary Abraham (Legal Counsel)***

***To: Roger Barth and Kate Kremer (SOS Counsel)***

***Re: Summary of Letter from US Department of Interior (David Stilwell – Field Supervisor) to Mr. Dave Phillips (Environmental and Wildlife Permitting Director – APEX)***

*Acoustic and mobile marine radar studies of bird and bat movement along the south shore of Lake Ontario were conducted by USFWS, and additional similar studies will be conducted this fall. The preliminary results show that migratory birds and bats would be at risk of collision with those turbines proposed to be sited near the shore, with the implication that Apex may need to redesign the project to avoid that risk.*

*Apex has begun its own bird and bat study for the Lighthouse Wind project and the letter notes that a bald eagle nest in the project area has been observed, and a “take” (collision, disturbance, killing) of bald eagles is “strictly prohibited under” the Bald and Golden Eagle Protection Act. The same is true for migratory birds, under Migratory Bird Treaty Act. Also, the Northern long-eared bat is now a listed “threatened” species under the Endangered Species Act (a higher level of protection is afforded if a species is listed as “endangered”), but an “incidental take” permit is available from USFWS. (Wind project sponsors have historically been very averse to applying for such a permit.)*

*USFWS finds Apex’s bat survey protocol and migratory bird survey protocol are deficient and requests that they be revised and submitted to the Service for review. The Service further advises that all turbines should be placed three miles away from the shore. Finally, in light of the high level of protected bird (and potentially bat) activity in the area the letter advises Apex to reconsider “whether this site constitutes an appropriate placement for this project in light of current wildlife activity at this site.”*

Please feel free to contact me with any questions you may have.

Sincerely,

John B. Riggi

President, Save Ontario Shores (SOS)

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